THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.14228 of 1996

DATED: 02.04.2007

Between:

Ram Deo Upadhyay .. Petitioner

And

Bhadrachalam Public School & Junior College, Sarapaka, Khammam rep. by its Chairman & Managing Director and others. .. Respondents

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WRIT PETITION No.14228 of 1996

ORDER:

This Writ Petition is filed seeking a mandamus declaring the order of termination, dated 24.04.1996, passed by the third respondent as arbitrary, illegal and contrary to provisions of the Andhra Pradesh Education Act, 1982 (for short 'the Act').

(2) It appears, the first respondent-Management i.e., Bhadrachalam Public School, Sarapaka, Khammam, is an unaided School, but it is recognized under the provisions of the Act. It appears, the petitioner worked in the said School as a Hindi Pandit from 08.07.1989 and his services were sought to be terminated by issuing advance notice, dated 24.04.1996, i.e., three months notice to be expired by 23.07.1996. Aggrieved by the same, the present Writ Petition is filed.

(3) Now, it is the case of the petitioner that during pendency of the Writ Petition, he had given his resignation telegraphically on 23.07.1996 for the said post, and as the same was not accepted, he withdrew the same, therefore, it must be deemed that he is in continuous service and the notice issued by the 3rd respondent, dated 24.04.1996, seeking to terminate his services is arbitrary and illegal.

(4) The respondents filed a detailed counter denying the allegations made by the petitioner. It is categorically asserted that the School is

an unaided School, and the Writ Petition is liable to be dismissed as the Statutory Provisions under Section 79 of the Act may not be attracted and also under Section 80 of the Act, which provides for an efficacious alternative remedy of an appeal, and also as per the agreement between the parties, an advance notice, dated 24.04.1996, was issued seeking to terminate the services of the petitioner. Before three months period could expire on 23.07.1996, the petitioner filed the present Writ Petition before this Court on 18.07.1996. In fact, on 23.07.1996, the petitioner sent his telegraphic resignation to the respondents and also addressed a letter in his own hand writing, dated 25.07.1996, confirming the same and requesting for settlement of his account including gratuity, which was accepted by the respondents on 26.07.1996 and the same was communicated to the petitioner.

(5) I have given my earnest consideration to the respective submissions made by the learned counsel on either side, and perused the impugned order and other material made available on record.

(6) I am of the opinion that this is not a case of any misconduct attributed against the petitioner. The very School itself is not admitted to grant-in-aid, but since, it is recognized under the Act, it is obligatory on the part of the respondent-Management to follow the provisions of Sections 79 and 80 of the Act. This is neither a case of dismissal nor termination on the ground of misconduct. In this case, admittedly, three months advance notice was given on 24.04.1996 as per the agreement between the parties and the services of the petitioner were thus, sought to be terminated with effect from 23.07.1996. In the meanwhile, it appears, the petitioner sent a letter of resignation telegraphically, dated 23.07.1996, asking the respondents to relieve

him, as if, he has resigned the post, instead of terminating his services. Further, the petitioner also addressed a letter on 25.07.1996 requesting for settlement of his account including gratuity and the same was accepted on 26.07.1996 and communicated to the petitioner. However, the fact that the communication of the letter of acceptance by the respondent to the petitioner was denied.

(6) Be that as it may, the impugned order is a notice i.e., three months advance notice as required under the agreement. There is also no dispute that the period expired on 23.07.1996 and it has been given effect to. In those circumstances, even if the petitioner has resigned on 23.07.1996 and thereafter, it was accepted on 26.07.1996 or that the petitioner withdrew it in the meanwhile, all have no relevance for the purpose of deciding the issue that arises for consideration in this Writ Petition. The Writ Petition is devoid of merits and is liable to be dismissed.

(7) The Writ Petition is accordingly dismissed. No order as to costs.

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(**C.V.RAMULU,J)**

02.04.2007
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